

Message Text

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ACTION L-02

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FM AMEMBASSY JAKARTA

TO SECSTATE WASHDC 8957

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TAGS: EFIN ID

SUBJECT: INCOME TAX CONVENTION U.S. - INDONESIA

REF: A. JAKARTA 3016 B. JAKARTA 2787 AND PREVIOUS

1. SUMMARY AND ACTION REQUESTED: DEPLU HAS OFFICIALLY RAISED NEW QUESTION REGARDING LANGUAGE IN DRAFT TAX TREATY WHICH LIMITS ITS REACH IN ECONOMIC ZONE BEYOND CONTRACTING PARTIES' TERRITORY. IN OUR VIEW IT WILL BE DIFFICULT TO REACH AGREEMENT UNLESS USG CAN AGREE TO THEIR PROPOSAL -- DELETION PROTOCOL TO ARTICLE 3.

ACTION REQUESTED: THAT DEPARTMENT CAREFULLY EXAMINE IMPORTANCE SAID PROTOCOL IN CONTEXT OF OUR LOS POSITION; IF NOT STRICTLY ESSENTIAL, THAT EMBASSY BE INSTRUCTED YIELD TO INDONESIAN REQUEST; IF ESSENTIAL, THAT EMBASSY BE PROVIDED WITH COUNTER-PROPOSAL AND RATIONALE RESPONSIVE TO INDONESIAN LOS CONCERNS AS KNOWN TO OUR SENIOR LOS EXPERTS. END SUMMARY.

2. INFORMED BY GOI CHIEF TAX TREATY NEGOTIATOR FROM DIRECTORATE GENERAL OF TAXATION, ACHMAD DIN, THAT NEW OBJECTIONS HAD BEEN RAISED TO PREVIOUSLY AGREED LANGUAGE OUR TAX CONVENTION DRAFT, ECONOMIC/COMMERCIAL COUNSELOR SEVERAL WEEKS AGO REQUESTED OPPORTUNITY TO DISCUSS THIS NEW PROBLEM AT AN AUTHORITATIVE LEVEL. MEETING WAS LIMITED OFFICIAL USE

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ACCORDINGLY CALLED 24 JUNE WHERE SUFFRI JUSUF S.H.,

DIRECTOR DEPLU'S LEGAL DIVISION, CHAIRED INDONESIAN SIDE WHICH ALSO INCLUDED OTHER DEPLU REPRESENTATIVES AND TAX OFFICIALS (ACHMED DIN NOT PRESENT). SUFFRI INFORMED EMBOFFS ON THIS OCCASION THAT SECCAB (CABINET SECRETARIAT, PRINCIPAL PLACE COORDINATING BODY) HAD RAISED OBJECTIONS TO INCLUSION OF PROTOCOL TO ARTICLE 3. SECCAB APPROVAL IS ESSENTIAL TO AUTHORIZE INDONESIAN SIGNATURE.

3. USFRI POINTS OUT THAT PROTOCOL SETS OUR DRAFT APART FROM STANDARD FORMULATION INDONESIA HAS OBTAINED IN OTHER TREATIES (NETHERLANDS, BELGIUM, UK, FRANCE) IN WHICH "THE TERM 'INDONESIA' MEANS (OR 'COMPRISES') THE TERRITORY...AND THE PARTS OF THE SEABED AND SUBSOIL UNDER THE ADJACENT SEAS, OVER WHICH THE REPUBLIC OF INDONESIA HAS SOVEREIGN RIGHTS IN ACCORDANCE WITH INTERNATIONAL LAW." HE INDICATED SECCAB CONCERNED LEST PROTOCOL IMPLY LIMITATION ON RIGHTS WHICH GOI HOPES TO ESTABLISH UNDER LAW OF THE SEA (LOS) TREATY. HE ARGUED THAT PROTOCOL COULD BE REGARDED AS "UNNECESSARY" IN ANY CASE BECAUSE OF THE PROTECTION "IN ACCORDANCE WITH INTERNATIONAL LAW" PHRASE INCLUDED ARTICLE 3, SUB-PARAGRAPHS (1)(A) AND (B) (II).

4. ASKED WHAT ALTERNATIVE PROPOSALS GOI WOULD PUT FORWARD, SUFFRI SAID SECCAB IN REQUESTING SIMPLE DELETION OF PROTOCOL TO ARTICLE 3. PRESSED, HE SAID FORMULATION SUBJECTING INTERPRETATION THOSE SUBPARAGRAPHS TO LATER NEGOTIATION AND, EVENTUALLY, ARBITRATION MIGHT ALSO BE ACCEPTABLE. (WE BELIEVE THIS WOULD COMPLICATE AND DELAY SECCAB CONSIDERATION.)

5. IN RESPONSE TO QUESTION SUFFRI ACKNOWLEDGED THAT GOI, LIKE USG, WOULD NOT ASSERT THAT STATES EXERCISE OTHER RIGHTS BEYOND THEIR TERRITORIAL BOUNDARIES THAN RIGHT TO CONTROL EXPLORATION AND EXPLOITATION OF RESOURCES OF ECONOMIC ZONE. HE DECLINED TO ARTICULATE REASON WHY SECCAB FEARS THAT PROTOCOL LIMITS INDONESIAN LOS POSITION, AND APPEARED TO AGREE WITH US THAT IT DOES NOT. NEVERTHELESS, HE MADE IT QUITE CLEAR THAT SECCAB WILL NOT ACCEPT LIMITED OFFICIAL USE

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PROTOCOL -- AT LEAST NOT AS IT NOW STANDS.

6. COMMENT: ONCE AGAIN OUR FUGITIVE ACCORD HAS GONE ASTRAY. AGAIN, AS FREQUENTLY IN THE COURSE OF THESE NEGOTIATIONS, WE ARE DEALING THROUGH AN INTERMEDIARY WITH THE SOURCE OF INDONESIAN OBJECTIONS. MOREOVER, LIKELY NO ONE WITHIN SECCAB ITSELF FULLY UNDERSTANDS THE IMPLICATIONS OF LANGUAGE LIKE THIS FOR INDONESIAN LOS POSITION. WE THEREFORE EXPECT BUILT-

IN RIGIDITIES IN TRYING TO DEAL WITH THIS PROBLEM. EARLY
INITIALLING OF CONVENTION TEXT APPEARS WITHIN OUR TRASP
ONLY IF USG CAN AGREE TO SECCAB PROPOSAL. PRESENTATION
OF ALTERNATIVES WILL BE TIME-CONSUMING AND WOULD INVOLVE
DIFFICULTY OF FOCUSING ON TAX CONVENTION THE ATTENTION
OF THESE INDONESIANS HAVING BOTH AUTHORITY TO DECIDE (OR TO
OBSTRUCT) IT AND UNDERSTANDING OF LOS QUESTIONS.

7. SHOULD USG BE UNABLE TO ACCEPT TREATY WITH THIS
DELETION, EMBASSY BELIEVES ALTERNATIVE PROPOSALS, IF
PROPERLY PRESENTED, WOULD HAVE A CHANCE OF SUCCESS.
EVEN IN ABSENCE EFFECTIVE SUPPORT FROM THE TAX DIRECTORATE,
A REASONED ARGUMENT DIRECTED TO THOSE IN THE GOI MOST DIRECTLY
CONCERNED IN LOS MATTERS MIGHT DISSOLVE OPPOSITION ATTRIBUTED
TO SECCAB. U.S. OFFICIALS FAMILIAR WITH INDONESIAN THINKING
ON LOS MATTERS THROUGH WORK WITH KEY INDONESIAN LOS FIGURES
(E.G., JOHN NORTON MOORE OR BERNARD OXMAN) MIGHT BE ABLE HELP
DEVISE ALTERNATIVE PROPOSAL AND SUPPORTING RATIONALE WHICH
WOULD BE ACCEPTABLE WITHIN GOI.
NEWSOM

NOTE BY OC/T: REFTELS NOT AVAILABLE.

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